



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0131; Notice 2]

FCA US LLC, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: FCA US LLC (f/k/a Chrysler Group LLC) “FCA” has determined that certain model year (MY) 2004-2020 Chrysler, Dodge, Jeep, Fiat, and Alfa Romeo motor vehicles do not comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays*. FCA filed a noncompliance report dated November 15, 2019, and later amended it on December 9, 2019. FCA subsequently petitioned NHTSA on December 9, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of FCA’s petition.

FOR FURTHER INFORMATION CONTACT: Neil Dold, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-7352, facsimile (202) 366-3081.

SUPPLEMENTARY INFORMATION:

I. Overview:

FCA has determined that certain MY 2004-2020 Chrysler, Dodge, Jeep, Fiat, and Alfa Romeo motor vehicles do not comply with paragraph S5.2.1 of FMVSS No. 101, *Controls and Displays* (49 CFR 571.101). FCA filed a noncompliance report dated November 15, 2019, and later amended it on December 9, 2019, pursuant to 49 CFR 573, *Defect and Noncompliance Responsibility and Reports*. FCA also petitioned NHTSA on December 9, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis

that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 40 U.S.C. 30118 and 49 U.S.C. 30120, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of FCA's petition was published with a 30-day public comment period, on July 13, 2020, in the **Federal Register** (85 FR 42066). One comment was received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2019-0131."

II. Vehicles Involved:

Approximately 2,507,693 MY 2004-2020 Chrysler, Dodge, Jeep, Fiat, and Alfa Romeo motor vehicles, manufactured between November 25, 2002, and November 9, 2019, are potentially involved.

III. Noncompliance:

FCA explains that the noncompliance is that the subject vehicles are equipped with speedometers that allow the driver to configure the speedometer to display the vehicle's speed in kilometers-per-hour (km/h) only and therefore do not meet the requirements set forth in paragraph S5.2.1 and Table 1, Column 3 of FMVSS No. 101.

IV. Rule Requirements:

Paragraph S5.2.1 and Table 1, Column 3 of FMVSS No. 101 provide that each passenger car, multipurpose passenger vehicle, truck and bus that is fitted with a control, a telltale, or an indicator listed in Table 1 or Table 2 must meet the requirements of FMVSS No. 101 for the location, identification, color, and illumination of that control, telltale or indicator. Each control, telltale and indicator that is listed in column 1 of Table 1 or Table 2 must be identified by the symbol specified for it in column 2 or the word or abbreviation specified for it in column 3 of Table 1 or Table 2. Specifically, the speedometer must only allow the speed to be displayed in miles per hour (MPH) or km/h and MPH.

V. Summary of FCA's Petition:

The following views and arguments presented in this section, “V. Summary of FCA’s Petition,” are the views and arguments provided by FCA and do not reflect the views of the Agency. In its petition, FCA describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, FCA offers the following reasoning:

1. FCA states that the vehicles are initially delivered for first-sale in a compliant state (vehicle speed displayed in MPH) and that it is only through vehicle operator interaction that the settings can be changed from MPH to km/h. FCA believes that this adjustment cannot be accomplished inadvertently.
2. FCA states that the two speedometer settings are clearly and continuously identified as "km/h" or "MPH". In addition, the two speedometer scales are noticeably different, and if a previous vehicle operator changed the units, a subsequent vehicle operator would be able to tell in a glance that the scale is not in MPH.
3. FCA states that the vehicle speed in km/h is 1.6 times greater than speed in MPH [in terms of numeric value displayed by the speedometer – 1km/h is approximately 0.62 MPH]. FCA believes that if a vehicle operator changes the display to km/h and then later forgets that the change had been made, the operator will recognize that the vehicle is moving at a slower speed than intended and adjust the speed to match the road and vehicle conditions. This should alert the operator to (at the next appropriate opportunity) perform the appropriate steps to adjust the speedometer.
4. FCA also states that the owner's manuals for all of the affected vehicles contain instructions to change the speedometer display. Therefore, if a vehicle operator needs assistance to reconfigure the display to MPH, instructions are available.
5. FCA further states that the owner's manuals contain toll-free numbers to the FCA customer help- lines. Therefore, if a vehicle operator notices that the speed is unintentionally displayed in km/h and does not know how to re-set the speed to

display in MPH, e.g., as set by a previous operator, the vehicle operator can easily contact FCA for assistance.

6. FCA has not received any customer contacts regarding this issue, even though this condition exists as in approximately 2.5 million vehicles, some of which have been in service for over 16 years.
7. FCA is not aware of any crashes, injuries, or customer complaints associated with this condition.
8. FCA states that NHTSA has previously granted inconsequential treatment for FMVSS No. 101 noncompliance for display of the vehicle speed in km/h only. An example of the Agency granting a similar inconsequentiality petition for display of the vehicle speed in km/h only is:

- BMW of North America, LLC, a subsidiary of BMW AG, 80 FR 61884 (October 14, 2015).

9. It is FCA's belief that the information described above satisfies the intent of 49 CFR Part 556 and operators can safely utilize their vehicles for the intended purposes. FCA believes that pursuant to 49 CFR part 556, 49 USC §30118(d) and §30120(h), and FMVSS 101 S5.2.1, this display of the vehicle speed in km/h only noncompliance is inconsequential to motor vehicle safety and FCA should be exempted from the notification and remedy requirements of 49 USC chapter 301, "Motor Vehicle Safety" for the reasons supporting exemption cited above.

FCA's complete petition and all supporting documents are available at the Federal Docket Management System (FDMS) website at: <https://www.regulations.gov> by following the online search instructions to locate the docket number as listed in the title of this notice.

VI. Public Comment:

NHTSA received one comment from the public. This comment was submitted by an individual who expressed concerns over a vehicle they own that was manufactured by FCA.

While the Agency takes great interest in the public's concerns and appreciates the commenter's feedback, the comment does not address the purpose of this particular petition.

VII. NHTSA's Analysis:

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement with no performance implications*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.¹ Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance issues was the safety risk to individuals who experience the type of event against which the recall would otherwise protect.² In general, NHTSA does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. “Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.”³ “[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.”⁴

¹ Cf. *Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

² See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

³ *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016).

⁴ *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it “results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future”).

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.⁵ Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.⁶ These considerations are also relevant when assessing whether a defect is inconsequential to motor vehicle safety.

FMVSS No. 101 requires speedometers to be labeled with units of MPH or both MPH and km/h simultaneously. The purpose of FMVSS No. 101 is to reduce safety hazards caused by the diversion of the driver's attention from the driving task when using controls, telltales, and indicators. In its petition, FCA explains that speedometers in certain vehicles are not compliant with FMVSS No. 101 because they may be set to display speed in units of km/h without simultaneously displaying speed in MPH.

NHTSA has evaluated the merits of the inconsequential noncompliance petition submitted by FCA and has determined that this particular noncompliance is inconsequential to motor vehicle safety. Specifically, the Agency considered the following when making its decision:

1. FCA explained that vehicles are delivered with speedometers displaying units in MPH and that switching the speedometer to display speed in units of km/h can only be accomplished by a vehicle operator adjusting the settings of the

⁵ See *Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance*, 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

⁶ See *Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance*, 64 FR 29408, 29409 (June 1, 1999).

vehicle.

2. FCA explained that speedometers are clearly labeled at all times in either MPH or km/h and that an operator can change the setting back to MPH. If an operator were unaware of the means to change the setting from km/h to MPH, FCA indicated that instructions are available within the owner's manual or via FCA's customer-help phone service.
3. NHTSA agrees with FCA that it is unlikely that the switch from MPH to km/h could be done inadvertently because physical interactions with the vehicle settings controls are required by the operator to make the change. We believe that if an operator were to make this change it would be done intentionally and with some understanding of the implications and would be unlikely to cause any impact to vehicle safety. Also, if an operator were unaware that a speedometer had been changed to display speed in km/h, they would be likely to travel at a slower speed rather than a faster speed that might impact safety because the indicated numeric value of the speed in km/h would be 1.6 times greater than the numeric value of the speed in MPH. For example, a driver attempting to match a speed limit of 40 MPH using a speedometer reading "40" in km/h would be traveling approximately 25 MPH and have an opportunity to safely detect the difference between their speedometer reading and the speed of nearby traffic.
4. Based on the information provided by FCA, NHTSA agrees with FCA that their petition is highly similar to petitions previously granted inconsequential treatment (80 FR 61884 and 85 FR 39675).

VIII. NHTSA's Decision:

In consideration of the foregoing, NHTSA finds that FCA has met its burden of persuasion that the subject FMVSS No. 101 noncompliance in the affected vehicles is

inconsequential to motor vehicle safety. Accordingly, FCA's petition is hereby granted and FCA is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that FCA no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after FCA notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

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